

## EXHIBIT “A”

### Expert Report of Dr. David A. Pyle

Animal Legal Defense Fund, People for the Ethical Treatment of Animals,  
Counterpunch, Amy Meyer, Will Potter, Daniel Hauff, James McWilliams,  
Jesse Fruwirth,

Plaintiffs,

Vs.

Gary R. Herbert, Governor of Utah, et.al,

Defendants.

Case 2:13-cv-00679-RJS

Expert Report

## I. Introduction

This report addresses issues related to the challenge of Utah's "Ag-Gag" law, Utah Code Ann. §76-6-112 (West 2012). This report is a response to potential issues that could be created for livestock production that could arise due to unauthorized access to intensive animal production units. The report is based on my 38 years of poultry production experience and referenced materials.

## II. Qualifications.

After graduation from the Michigan State University Veterinary School in 1976, I was employed at the Forrest Hills Veterinary Clinic for about 1 year. In 1977 I took a position with Bil Mar Foods, Zeeland, MI as the company veterinarian and was responsible for the health programs of the companies' turkey production. Over the twenty years with the company my role was expanded to ultimately being the Executive Director of Live Production. In 1977 I went to work for Bayer Animal Health, Shawnee Mission, KS as technical services veterinarian for poultry. My role was technical service veterinarian providing support of the products the company sold to the poultry industry. In 2004 the position I held at Bayer was eliminated, and my employment was terminated. Following this I began consulting to various poultry companies, mainly turkey production companies. The services I provide are veterinary related services including disease diagnosis and prevention, production problem investigations and solutions, biosecurity programs and implementations, and poultry welfare program recommendations and implementation. As welfare issues have become more of a focus for poultry production companies, my time spent on welfare related issues has increased. And as major disease outbreaks such as the influenza outbreak of 2015 have occurred, more of my focus has been also been on improving biosecurity for my clients. I also do third party welfare audits for several poultry companies.

In addition to my experiences, my welfare focus includes activities in several areas of poultry welfare. In 2007 I was involved the first Professional Animal Auditor Certifying Organization (PAACO) poultry training and was awarded Foundation Auditor status to

provide shadow audits for poultry auditor certification. In 2013 the American Association of Avian Pathologists (AAAP) nominated me to be one of their representative to PAACO Board of Directors. I have also done training at the PAACO poultry welfare auditor training classes. In the PAACO position I am exposed to and do reviews of both poultry and non-poultry welfare and audit documents including those for swine and cattle. I am also a member of the AAAP welfare committee. I have also been involved the National Turkey Federation's (NTF) Turkey Health and Welfare committee and for the last year and a half been chairing a subcommittee which is revising the NTF's turkey welfare guidelines and audits.

I have been called in to work for several poultry companies after they have experienced a welfare related issue and consulted with them to help improve and implement their welfare programs.

Professional activities and Associations:

- Member of American Association of Avian Pathologists
- Member of American Veterinary Medical Association
- Member and Past President of the Association of Veterinarians in Turkey Production
- Member of the National Turkey Federation Turkey Health and Welfare Committee
- Member of Association of Veterinarians in Egg Production
- Professional Animal Auditor Certification Organization (PAACO) Board of Directors, and a Foundation Poultry auditor for this organization
- Past President and past Board member, Michigan Allied Poultry Industries
- Past Board Member of the National Turkey Federation
- Recipient of Meritorious Service Award, North Central Avian Disease Conference, 2001

Publication:

- Author of Chapter 16, Special Considerations for Waterfowl, A Practical Guide to Managing Risk in Poultry Production, American Association of Avian Pathologists, 2011

Presentations to various agriculture groups, conventions, and meetings:

- Acute Lassaacid Toxicity in Commercial Market Age Tom Turkeys, a case report, AAAP Annual Convention, Boston, MA July, 2015

- Poultry Welfare Audits; from an auditors perspective, Center for Food Integrity Symposium, July, 2010

- Acute Respiratory Disease due to concurrent Mycoplasma synoviae and Newcastle Disease with secondary Pasteurella multocida in commercial tom turkeys. A case report. North Central Avian Disease Conference, St. Paul, MN 2008

### III. Compensation

My hourly rate for research, report preparation, and consultation is \$150 per hour. Travel time is also at this rate (rounded up to the next hour) plus all related travel expenses, including but not limited to airfare, rental car and fuel, meals, IRS standard mileage rates, and supplies. Payments are due in 30 days. Interest of 1.5% per month will be added for payments exceeding 30 days from the date of invoice.

IV. General References used for the preparation of this report.

Diseases of Poultry, 12<sup>th</sup> Edition, Y. M. Saif, Editor-in Chief, American Association of Avian Pathologists, 2008

A Practical Guide for Managing Risk in Poultry Production, Robert L. Owen VMD Editor, American Association of Avian Pathologists, 2011

Biosecurity in the Poultry Industry, Simon Shane Editor, American Association of Avian Pathologists, 1995

National Farm Biosecurity Manual Poultry Australia, Government/Industry Influenza Forum, May 2009

Biosecurity Fundamentals for Visitors to Livestock Facilities, Ontario Ministry of Agriculture, Food, and Rural Affairs, website:  
<http://www.omafra.gov.on.ca/english/livestock/poultry/health.html>

Avian Influenza, David Swayne editor, Chapters 16 &17, Blackwell Publishing, 2008

Other references cited in VI, Opinion and comments.

V. Focus of the review

The issues to which I have focused my review and opinions are responses to the following questions:

1. *If the conduct described in HB-187 is undertaken at an agriculture operation, what, if any, risks would it present to the safety of the workers, safety to the animals and safety to the food supply?*
2. *If the conduct described in HB-187 is prohibited, how could reports of animal abuse otherwise be undertaken?*

## VI. Opinion and Comments

*If the conduct described in HB-187 is undertaken at an agriculture operation, what, if any, risks would it present to the safety of the workers, safety to the animals and safety to the food supply?*

A person entering an animal production facility under false pretenses or entry of any other unauthorized person(s) puts the livestock at potential disease risk for several reasons:

Biosecurity of all livestock premises is extremely important in modern agricultural facilities, especially intensive production units. Introduction of a highly infectious or foreign animal disease can be devastating for both the animals involved and the owners and workers. It also poses a risk to the others in the area or community. As the Highly Pathogenic Avian Influenza outbreak in 2015 demonstrated, the cost of such severe diseases to industry, the local communities, right up to the Federal Government, was in the billions of dollars. The outbreak affected millions of turkeys, chickens, and assorted other poultry from December 2014 to June, 2015. There were 211 commercial poultry farms and 21 backyard poultry farms affected. 7.5 million turkeys, 38.5 million layer hens, and 3.5 million pullets either died due to the disease or were destroyed to control the spread of the influenza virus. The direct financial consequences of the 2015 outbreak were \$800 million to integrators and contractors, \$500 million to suppliers and communities, and \$1 billion to USDA and states. Other costs were estimated to be \$1.7 billion in increased prices to consumers, and \$1.5 billion due to disruption of export markets.<sup>1</sup> All biosecurity programs including those of USDA Animal Plant Health Inspection Services as well as other country/provinces are very specific regarding the control of personnel, visitors, and unauthorized persons into livestock facilities to prevent the introduction of highly contagious and deadly disease that can infect food animals.<sup>23</sup> In the report USDA Epidemiologic and other Analysis of HPAI Infected Poultry Flocks, the movement of people were considered fomites and one the ways HPAI was transmitted<sup>4</sup>. Knowledge and control of the movement of people is essential for effective disease control.

A person who enters a facility for reasons other than what they are hired for, or admitted to the facility for, and has an agenda that is contrary to what the producer is trying to do, and likely will not be aware of the disease risks they may pose to the production facilities. Many poultry operations train employees to their biosecurity program and require employees to sign a biosecurity agreement. Someone with an alternative agenda, who is willing to be untruthful on a job application as to the

<sup>1</sup> The U. S. H5N2 Epornitic of 2015-Leesions Learned, NCSU Presentation, Sept. 16, 2015, Simon Shane, FRCVS, BVSc, PhD.

<sup>2</sup> Biosecurity Fundamentals for Visitors to Livestock Facilities, Ontario Ministry of Agriculture, Food, and Rural Affairs, [http://www.omafr.gov.on.ca/english/livestock/poultry/facts/bio\\_plan.htm](http://www.omafr.gov.on.ca/english/livestock/poultry/facts/bio_plan.htm)

<sup>3</sup> Biosecurity for the Birds, USDA APHIS, Veterinary Services Bulletin, Revised April, 2014

<sup>4</sup> USDA Epidemiologic and Other Analysis of HPAI Infected Poultry Flocks: July 15, 2015

reason they seek employment, quite likely may not be truthful in regards to required biosecurity protocol. As an example, if a person has pet birds such as exotic pet species, or simply has come in contact with other bird species, these other birds may have or carry a disease such as Exotic Newcastle Disease or Avian Influenza. If this person then goes into a commercial poultry facility and infects this farm, this person has not only created economic hardship for the producer, but also created a very severe welfare issue and many birds could suffer and die needlessly, as detailed above. The general public for the most part does not understand the very strict biosecurity issues and programs that animal industries like poultry and swine have in place to prevent disease introductions and outbreaks. In *A Practical Guide for Managing Risk in Poultry Production*<sup>5</sup> there are numerous citations describing the disease risks that both employees and unauthorized persons pose when they enter a livestock production facility.

A person entering an animal production facility to take pictures or video footage, or in some other way wishes to disrupt normal operations, or has intentions other than carrying out the reason for which they were hired or admitted to the facility, likely does not have the best interest of the individual animal in mind. Proper care of an animal, and particularly a group of animals, requires focus and a desire to provide the best for the animals in terms of best environment, including but not limited to proper temperature and ventilation, proper lighting, bedding or litter that is kept in the best condition, and access to feed and water. Someone with another agenda tends to ignore the problems so that they can get or create the proper video footage, sabotage, or in some other way disrupt and/or damage facilities to satisfy their needs and not the immediate need of the animal. Review of video available on websites of undercover footage allegedly showing animal abuse almost always shows no response to the animal's situation, particularly by the person doing the recording. There may also be requirements of the job that require the handling of the animals and performing tasks that, due to their belief or reason for being there, they would not be willing to do, thus putting the proper care and treatment of the animals at risk. In the poultry industry it is almost universal that new employees receive training or orientation in the company welfare program, which includes the requirement for reporting abuse immediately, and are required to sign an agreement to abide by that policy. In cases I am familiar with, the person accepting employment under false pretenses does not adhere to these policies and does not report the abuse to management. They are more interested in getting footage to make a big public announcement, not ending the abusive situation. Thus in essence, participating and accepting abuse to accomplish their agenda.

Also, the health and safety of workers may be jeopardized if the person helping or assisting with a particular task is not properly engaged in the task. Some tasks in animal production are perceived by the general public as not very pleasant, such as dealing with manure and manure handling equipment, and many of these jobs require two persons who are engaged with the task at hand. Should someone who is not engaged balk at properly doing the job, it could be dangerous for the other workers as well as having negative impacts to the animals.

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<sup>5</sup> *A Practical Guide for Managing Risk in Poultry Production*, AAAP, 2011.



A breach in biosecurity can also have food safety implications through the introduction of a human health pathogen into a flock. The most recognized example would be Salmonellosis in poultry. The industry as well as USDA are working hard to reduce the level of Salmonellosis in poultry and poultry products through programs like the National Poultry Improvement Plan (NPIP)<sup>6</sup>. Again, someone with an agenda other than proper care and husbandry of the animals and not properly following biosecurity protocol, may introduce or create a situation where Salmonella is brought in and infects a group of animals. A theoretical example of this could be rodent control in a poultry facility. Rodents are known carriers of Salmonella species and proper control is a part of all Salmonella control programs including those of USDA and FDA. Should someone with an extreme animal rights agenda be tasked with carrying out the rodent control program, but due to this person's animal welfare beliefs, does not wish to eliminate or control the rodents and thus not perform the job as directed, could cause the program to be ineffective and thus cause the introduction of Salmonella, thereby creating a food safety issue, and possibly an issue for employees contracting Salmonellosis.

A person accessing a facility under false pretenses may access areas they are not supposed to in way that causes the animals or birds to startle creating a stampede or crowding situation. This creates a potential for injury or in the case of poultry piling on top of each other causing death. The person is thus causing a welfare issue for the animals.

*If the conduct described in HB-187 is prohibited, how could reports of animal abuse otherwise be undertaken?*

Animal welfare, proper care of animals, whether pets or food animals, requires the owner or caretaker of the animals to care for the animals in their custody in a humane manner consistent with the expected societal norms.

Every state and possibly other governmental jurisdictions have animal anti-cruelty laws. It is incumbent that all animal owners and caretakers, including employees, take very seriously the welfare of the animals in their custody. The food animal industries need to make animal well-being a part of their culture. Companies need to report any abuse to the appropriate authorities. Many poultry companies have set up toll free tip lines for reporting potential abuse. The poultry industry must adopt a zero tolerance policy for animal abuse. Failure to report abuse makes one complicit with breaking the law. Some poultry production companies have implemented an employee no consequence policy for reporting abuses, and some have set up toll free or other call in methods for the employees and others to use. Many poultry companies now have a Welfare Officer whose job is to oversee and administer the company welfare policy and manage compliance with its welfare standards. Others have set up a committee of employees who have welfare responsibility in live

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<sup>6</sup> National Poultry Improvement Plan, USDA APHIS, Title 9, Animals and Animal Products Parts 145-147

production areas. Many processing companies and even some production facilities are installing surveillance cameras in strategic areas to monitor the animals and activities and thus document any acts of abuse.

Much of food animal production is adopting animal welfare guidelines and audits, and require training for all personnel handling animals. Industry standard audits have been in place for some time. For poultry this includes the National Chicken Council (NCC)<sup>7</sup>, The National Turkey Federation (NTF)<sup>8</sup>, and National Pork Board Common Industry Swine Audit<sup>9</sup>. Other organizations such as American Humane Association and Global Animal Partnerships have welfare guidelines and audit tools that are being used by some companies. The Professional Animal Auditor Certifying Organization is training welfare auditors to help improve food animal welfare. USDA FSIS is also auditing animal slaughter facilities to ensure compliance with welfare requirements.

Although nothing will prevent a rogue employee from committing an act of abuse, these welfare programs are helping to create a positive animal welfare culture and keeping good welfare at the forefront of production requirements.

## VII. Conclusion

Based on all universally accepted biosecurity recommendations and programs to protect animals from deadly infectious diseases and epizootic pathogens that have human health implications, there can be no doubt that unauthorized access to livestock operations poses a real biosecurity threat to the health and well-being of the animals in that facility. The safety and well-being of the farm owners, workers, and public health can also be put at risk in multiple ways. Thus Utah Code Ann. § 76-6-112 (West 2012) supports the livestock industry in preventing unauthorized entry.

Respectively Submitted,

David A. Pyle, DVM, ACPV

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<sup>7</sup> National Chicken Council Animal Welfare Guidelines and Audit Checklist, January 30, 2014

<sup>8</sup> National Turkey Federation Animal Care and Best Management Practices, November 2012

<sup>9</sup> National Pork Board, Common Industry Swine Audit, 2015